

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JERRY A. CHANDLER,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

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8:05cv227

MEMORANDUM AND ORDER

Before the court is filing no. 2, the application by the plaintiff, Jerry A. Chandler, for leave to proceed in forma pauperis in this appeal from a decision by the Social Security Administration.

IT IS ORDERED:

1. Filing no. 2, the plaintiff's application for leave to proceed in forma pauperis is granted.
2. The Clerk of Court shall send a copy of this Memorandum and Order together with three summons forms and three Form 285s to the plaintiff, for service of process on the United States.
3. The plaintiff shall, as soon as possible, complete the forms (see attached Notice for persons to be served) and send the completed summons and 285 forms back to the Clerk of Court. In the absence of those forms, service of process cannot occur.
4. Upon receipt of the completed summons and 285 forms, the Clerk shall sign the summons forms and forward them, together with copies of the complaint, to the U.S. Marshal for service on the United States.
5. The Marshal shall serve the United States, without payment of costs or fees. Service shall be effected pursuant to Fed. R. Civ. P. 4(i) regarding "[s]erving the United States, Its Agencies, Corporations, Officers, or Employees."
6. Fed. R. Civ. P. 4 requires service of the complaint on a defendant within 120 days of filing the complaint. However, because in this Memorandum and Order the plaintiff is informed for the first time of these requirements, the plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this Memorandum and Order to complete service of process.

7. The Clerk of Court shall bring this case to the attention of the court if service of process has not been obtained upon the defendant by 120 days from the date of this Memorandum and Order.

8. After an appearance has been filed by the defendant, the plaintiff shall serve on the defendant or, if the appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. The plaintiff shall include with each document submitted to the court for a "Certificate of Service" stating the date a true and correct copy of such document was mailed to the defendant's attorney.

9. The defendant shall respond to the plaintiff's claims by filing an answer or motion within the time prescribed by Fed. R. Civ. P. 12(a)(3).

10. The plaintiff shall keep the court informed of the plaintiff's current address at all times while this case is pending.

11. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court in the prosecution of this case. The federal rules are available at any law library, and the local rules are available at the office of the Clerk of Court, and also on the court's web site at www.ned.uscourts.gov.

DATED this 18th day of May, 2005.

BY THE COURT:

s/Joseph F. Bataillon
Chief District Judge

Notice regarding Federal Rule of Civil Procedure 4(i)

Federal Rule of Civil Procedure 4(i) regarding “[s]erving the United States, Its Agencies, Corporations, Officers, or Employees,” states:

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the **United States attorney for the district in which the action is brought** or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the **Attorney General of the United States** at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to **the officer or agency**.

(2) (A) Service on an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or corporation.

(B) Service on an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States--whether or not the officer or employee is sued also in an official capacity--is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4 (e), (f), or (g).

(3) The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served either the United States attorney or the Attorney General of the United States, or

(B) the United States in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or employee of the United States sued in an individual capacity.